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SUPREME COURT, U. S.

No. 10, Original

In the Supreme Court of the United States

October Term, 1953

STATE OF ARIZONA, Complainant,

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA, Defendants,

UNITED STATES OF AMERICA, Intervener,

STATE OF NEVADA, Intervener.

MEMORANDUM OF NEVADA IN REPLY TO MEMORANDUM REQUESTING PRE-TRIAL CONFERENCE BY THE UNITED STATES OF AMERICA

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Comes Now the State of Nevada and for its Reply to the Memorandum Requesting Pre-Trial Conference by the United States of America, admits, denies and alleges as follows:

I

Answering Paragraph I of said Request, the State of Nevada states that its preceding motion for leave to intervene, as alleged on page 2 of said Request; was granted by the Court on June 1, 1954, but denies that the State of Arizona has filed an applicable response to Nevada's petition in Intervention in that the alleged

Response of Arizona constituted nothing more than a demurrer interposed in opposition to the granting of Nevada's motion.

Answering subparagraph three of Paragraph I, the State of Nevada admits that voluminous pleadings have been filed in this action together with numerous pages of appendices to such pleadings, and in this connection Nevada alleges that all of said pleadings and appendices so far filed were and are necessary and constitute indispensable allegations of fact to apprise the Court of each and every issue, the resolving of which is vitally necessary to enable the Court to determine and settle the respective rights of the parties to the action. However, Nevada alleges that notwithstanding the present status of the pleadings so far filed, insofar as Nevada is concerned none of the issues raised by it in its Petition of Intervention have been controverted or joined by any other party to the action save the State of California. The United States, at page 6 of its Request, states that no disposition having been made of the motion of Nevada for leave to intervene, reference to the issues presented by Nevada will not be reviewed. Nevada suggests that now, its motion to intervene being granted, material issues will be drawn between the United States and Nevada by most applicable pleadings on the part of Nevada. The same situation exists between Arizona and Nevada. Upon the granting of Nevada's motion to intervene, Arizona will of necessity be required to file an answer to Nevada's Petition of Intervention with Nevada's right to reply thereto, then only will the material issues be joined between Arizona and Nevada.

The State of Nevada further alleges that the States of New Mexico and Utah, signatories of the Colorado River Compact, are classed, in part, by and in the Compact as Lower Basin States. Article II, paragraphs (f) and (g) provide:

> (f) The term "Upper Basin" means those parts of the States of Arizona, Colorado, New Mexico, Utah and Wyoming within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also

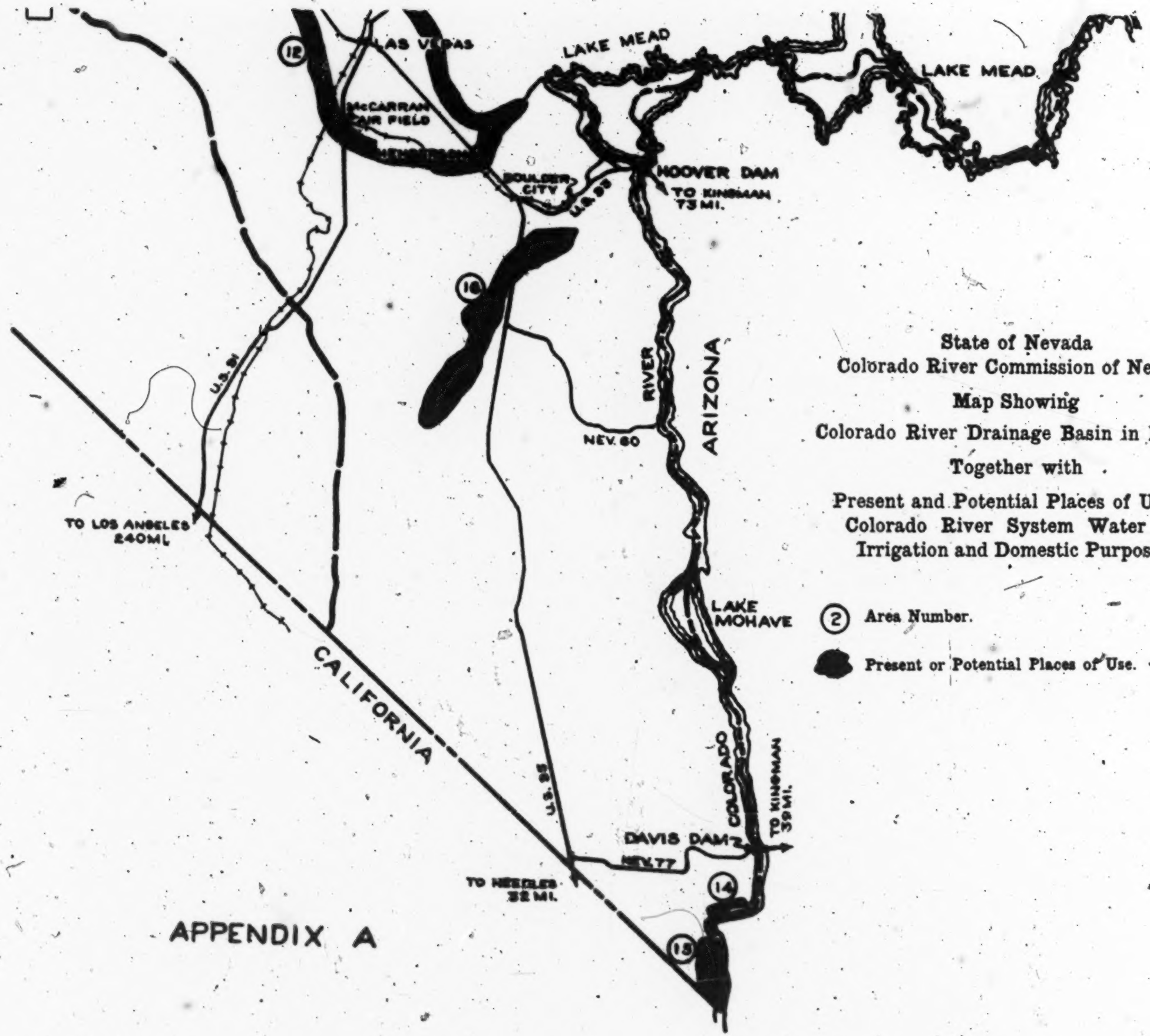
all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System above Lee Ferry.

(g) The term "Lower Basin" means those parts of the States of Arizona, California, Nevada, New Mexico and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System below Lee Ferry.

Notwithstanding the fact that New Mexico and Utah unquestionably possess rights to the use of the waters of the Colorado River Stream System apportioned to the Lower Basin States and by reason thereof each said State is an indispensable party to this cause, neither of them has been made a party thereto nor has either petitioned the Court for leave to intervene. Nevada most respectfully suggests that unless and until New Mexico and Utah are made or become parties herein, vital issues pertaining to the apportionment of the waters to which all of the Lower Basin States are entitled under the Compact cannot be judicially fixed and determined. And Nevada has so alleged in Paragraphs XIII, XI of the Petition of Intervention on Behalf of the State of Nevada filed herein December 21, 1953. Nevada suggests that all of the vitally necessary issues are not now sufficiently, or at all, joined to warrant a pre-trial conference.

II

Answering Paragraph II of the Request for Pre-Trial Conference of the United States, the State of Nevada denies that all the basic issues are as set forth therein and in this connection alleges that the basic issues are as set forth in Exhibit A of the Answer of California Defendants to Petition of Intervention on Behalf of the United States of America, designated Summary of the Controversy, and



State of Nevada
Colorado River Commission of Nevada

Map Showing

Colorado River Drainage Basin in Nevada

Together with

Present and Potential Places of Use of Colorado River System Water for Irrigation and Domestic Purposes.

(2) Area Number.

Present or Potential Places of Use.

APPENDIX A

the State of Nevada further alleges that said basic issues are interlocking and one or several issues cannot be decided independently of the other issues.

III

Answering subparagraph one of Paragraph III of the Request for Pre-Trial Conference of the United States, the State of Nevada alleges that the complexities of the litigation and numerous issues involved in this cause and the need for an early resolution of the controversy for the benefit of all parties and the Nation as a whole and the summary of the issues as set forth in California's Answer referred to in Paragraph II above, is accurate and concise based upon the pleadings of record at this time.

Answering subparagraph two of Paragraph III, the State of Nevada denies that "Antecedent to any resolution of the many and varied issues in this action must be a determination of the two basic propositions advanced by the State of California" and in this connection alleges that the matter is not at issue at the present time so as to warrant a pre-trial conference on any one or two issues and further, that the alleged one or two principal issues mentioned by the United States are so interrelated with other issues that it would not be judicious to attempt a determination of the said two basic issues.

IV

Answering Paragraph IV of the Request for Pre-Trial Conference of the United States, the State of Nevada denies that the reasons mentioned by the United States justify a pre-trial conference at this juncture of the proceeding and in this connection alleges that all the Lower Basin States are indispensable parties to this cause and until all such States are parties hereto and the issues fully joined between them and the United States, a pre-trial conference is premature.

Since the filing and service of the Memorandum Requesting Pre-Trial Conference by the United States, the Court, on June 1, 1954, appointed a Special Master to hear and report the future proceedings in the cause, including a resolving of the issues therein subject

to review by the Court. Nevada respectfully suggests that if a pre-trial conference before the Court, or a Justice thereof, is desirable or necessary, that it be not ordered until each, every and all the issues pertinent to the cause be drawn and that the Special Master participate therein.

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